

[Related to Docket No. 68]

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BRIAN DONLEY, Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LIVE NATION ENTERTAINMENT, INC.,
MICHAEL RAPINO, and JOE
BERCHTOLD,

Defendants.

Case No. 2:23-cv-06343-KK (ASx)

**~~[PROPOSED]~~ STIPULATED
PROTOCOL FOR DISCOVERY
OF ELECTRONICALLY
STORED INFORMATION
("ESI PROTOCOL")**

Lead Plaintiffs Brian Donley and Gene Gress ("Plaintiffs") and Defendants Live Nation Entertainment, Inc. ("Live Nation" or the "Company"), Michael Rapino, and Joe Berchtold (collectively, "Defendants", and together with Plaintiffs, the "Parties" and each a "Party"), by and through their respective undersigned counsel, hereby stipulate and agree to the following Stipulated Protocol for Discovery of Electronically Stored Information ("ESI Protocol" or "Protocol").

[PROPOSED] STIPULATED PROTOCOL FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION

I. GENERAL PROVISIONS

1. This Protocol will govern discovery of ESI and hard copy documents in this case as a supplement to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Central District of California (the “Local Rules”), and the individual Judges’ Procedures of District Court Judge Kenley Kiya Kato¹ and Magistrate Judge Alka Sagar² (together, the “Individual Rules”), and any other applicable orders and rules.

2. The Parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout this matter. The Parties shall follow the applicable Local Rules and the Courts’ Individual Rules with respect to any and all discovery disputes.

3. Unless otherwise agreed or directed by the Court, each Party will bear the costs to process and review its own documents according to this Protocol.

4. Nothing in this Protocol shall be construed to affect the discoverability or admissibility of any document. All objections to the discoverability or admissibility of any documents are preserved and may be asserted at any time in accordance with the applicable Federal Rules of Evidence, Federal Rules of Civil Procedure, and/or Local Rules or Individual Rules of this Court.

5. Each production of ESI shall be accompanied by correspondence indicating the Bates range, the custodians, the source and location for each produced item, and any applicable passwords.

II. DEFINITIONS

1. Defined terms are set forth below. In the event of any conflict, the more specific definitions set forth below shall control.

2. Action: means the above-referenced action.

¹ Available at: <https://www.cacd.uscourts.gov/honorable-kenly-kiya-kato>

² Available at: <https://www.cacd.uscourts.gov/honorable-alka-sagar>

1 3. Document: has the meaning ascribed to it in Federal Rule of Civil
2 Procedure 34(a)(1)(A). The term “Document” shall include Hard-Copy Documents
3 and ESI as defined herein.

4 4. Email: means electronic messages sent or received asynchronously via
5 messaging applications, including, but not limited to, Microsoft Outlook or Google
6 Gmail.

7 5. Email Threading: means a single email conversation that starts with an
8 original email (the beginning of the conversation) and includes all subsequent replies
9 and forwards pertaining to that original email.

10 6. ESI: an abbreviation of “electronically stored information,” which has
11 the meaning ascribed to in Federal Rule of Civil Procedure 34(a)(1)(A).

12 7. Extracted Text: means text extracted from a Native Format file and
13 includes at least all headers, footers, document body information, and any hidden
14 text, if available. The extracted text shall contain the content of any hypertext
15 markup language (“HTML”) present in the Native Format file, specifically including
16 (but not limited to) the full anchor and target text of any Hyperlinks, as defined
17 herein. The extracted text must not include text of characters that were not part of
18 the text of the original Native Format file, including, but not limited to, Bates
19 Numbers and Endorsements (except in the cases of redactions).

20 8. Hard-Copy Document: means Documents existing in paper form at the
21 time of collection.

22 9. Hash Value: means the unique numerical identifier that can be assigned
23 to a file, a group of files, or a portion of a file, based on a standard mathematical
24 algorithm applied to the characteristics of the data set. The most commonly used
25 algorithms, known as MD5 and SHA, will generate numerical values so distinctive
26 that the chance that any two data sets will have the same Hash Value, no matter how
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1 similar they appear, is less than one in one billion. “Hashing” is used to guarantee
2 the authenticity of an original data set and can be used as a digital equivalent of the
3 Bates stamp used in Hard-Copy Document productions.

4 10. Hyperlink: means an HTML link from an electronic Document to
5 another electronic Document, typically activated by clicking on a highlighted word
6 or image on the screen, and includes both the “anchor” text (*i.e.*, the ordinarily
7 visible, clickable text of the hyperlink, often presented in blue in the linking
8 document) and the “target” text (*i.e.*, the ordinarily invisible hypertext containing
9 the Uniform Resource Locator (“URL”) for the location of the linked document).

10 11. Texts: means real-time communications sent via chat client, short
11 messaging service (“SMS”), Multimedia Messaging Service (“MMS”), or Rich
12 Messaging Service (“RMS”), including but not limited to: Slack, Microsoft Teams,
13 Google Talk, Google Chat, Google Hangouts, Skype, Chatwork, Facebook
14 Messenger, Instagram Messenger, Line, Wire, Signal, Telegram, Snapchat, Wickr,
15 Discord, WhatsApp, WeChat, Bloomberg Messenger, or any proprietary instant
16 messaging system.

17 12. Load File: means an electronic file that is used to import all required
18 production information into a document database, including, if available, document
19 images, Extracted Text or OCR text, Native Format files where required by this ESI
20 Protocol, and Metadata, as well as information indicating document breaks, and
21 document relationships such as those between an Email or Texts and its attachments,
22 and a document and information related to embedded content.

23 13. Metadata: means (i) structured information about ESI that is created by
24 the file system or application that is not ordinarily viewable or printable from the
25 application that generated, edited, or modified such native file, embedded in the
26 Document or Email and sometimes modified through ordinary business use; (ii)

1 information generated automatically by the operation of a computer or other
2 information technology system when a native file is created, modified, transmitted,
3 deleted, or otherwise manipulated by a user of such system; (iii) information, such
4 as Bates Numbers, created during the course of processing Documents or ESI for
5 production; and (iv) information collected during the course of collecting
6 Documents or ESI, such as the name of the Media device on which it was stored, or
7 the custodian or non-custodial data source from which it was collected. Metadata of
8 the ESI describes, *inter alia*, the characteristics, origins, usage, and validity of the
9 collected ESI.

10 14. Native Format: means the format of ESI in the application in which
11 such ESI was originally created.

12 15. OCR: means the optical character recognition technology used to read
13 Hard-Copy Documents or electronic images of Documents and output such
14 Documents to a searchable text format.

15 16. Producing Party: means any Party or Third Party in the Action that
16 produces Documents.

17 17. Protective Order: means the Protective Order entered in this Action on
18 May 1, 2024 (Dkt. No. 64), as amended by any subsequent order(s) of the Court.

19 18. Receiving Party: means a Party in the Action to whom Documents are
20 produced.

21 19. Responsive Document: means any Document that is responsive to any
22 discovery request or subpoena served on the Producing Party in the Action and
23 which the Producing Party has agreed or been ordered to produce, subject to the
24 limitations set forth in the Federal Rule of Civil Procedure and/or Court order.

25 20. Tagged Image File Format or TIFF: refers to the CCITT Group IV
26 graphic file format for storing bit-mapped images of ESI or Hard-Copy Documents.

21. Third Party: Any other person/entity, other than a Party to this Action.

III. PRESERVATION AND IDENTIFICATION OF POTENTIALLY RELEVANT INFORMATION AND ESI

The Parties acknowledge that they have an obligation to take reasonable and proportional steps to preserve discoverable information in the Party's possession, custody, or control. Contemporaneously with their Rule 26(f) conference, the Parties will discuss their preservation obligations and needs, and agree that preservation of potentially relevant ESI will be reasonable and proportionate. Relatedly, the Parties agree to meet and confer to identify: the time frame for ESI that is necessary to be preserved; the names and number of individuals (along with any relevant information regarding job title and dates of employment in the relevant role) whose ESI should be preserved; and/or the sources that may possess ESI from which the producing Parties plan to collect documents in response to any Fed. R. Civ. P. 34 request for production. Nothing in this ESI Protocol shall affect the Parties' respective preservation obligations imposed by rule or law.

IV. SEARCH, COLLECTION & REVIEW

Consistent with Principle 6 of The Sedona Conference Principles, the Parties will meet and confer in good faith to reach an agreement on any methodologies to be employed for the collection and production of documents in response to any Fed. R. Civ. P. 34 request for production, such as the use of search terms, date ranges, electronic sources, or other filters. The Parties may use advanced search, analytical, and retrieval technologies like predictive coding or other technology-assisted review ("TAR") to prioritize the review of or the grouping of documents requested or returned from the use of search terms, date ranges, electronic sources, or other filters as agreed to between the Parties. Advanced search, analytical, and retrieval technologies such as predictive coding or other TAR shall not be used to exclude

from production any documents returned from search protocols agreed to between the Parties. This is an iterative process whereby the Parties agree to revisit, reevaluate, and refine these processes as needed to ensure validity and completeness. Relatedly, the producing Party, to the extent search terms are used, will upon request undertake reasonable efforts to provide search term reports that, after global family-level de-duplication, indicate the “hit” count of documents and documents including family per search term, the unique hit count of documents and documents including family per search term, the hit count of documents and documents including family per search term and custodian, the unique hit count of documents and documents including family per search term and custodian, and the total number of unique documents that hit on the search term list as a whole. If the producing Party believes that such search term reports are not reasonably practicable, the producing Party shall meet and confer with the requesting Party to explain the basis of that belief and explore the feasibility and appropriateness of any alternative search term report.

V. PRODUCTION FORMATS FOR DOCUMENTS FROM HARD COPY DOCUMENTS

A. Generally: Except for redacted and logged documents as described in **Section VII.H and VII.P** of this ESI Protocol, *infra*, the Parties will produce documents originating from Hard Copy Documents in CCITT Group IV single-page TIFF format (black and white, 300 dpi) with corresponding searchable multi-page optical character recognition (“OCR”) text, along with the below-listed metadata fields when available, unless the producing Party determines that the utility of the OCR is outweighed by the expense. If a Party produces documents without OCR text, it will identify any such documents by Bates number at the time of production. Settings such as “auto-skewing” and “auto-rotation” should be turned on during the OCR process. If an original document contains color, it need not be produced in color in the first instance. However, the producing Party will meet and confer in

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1 good faith in response to requests for a color image if color is necessary to
2 understand the meaning or content of the document. Color documents shall be
3 produced as single-page, 300 DPI JPG images with JPG compression and a high-
4 quality setting to as to preserve legibility. The Parties agree not to degrade the
5 searchability or legibility of documents as part of the document production process.

6 B. Document Unitization: In scanning paper Hard Copy Documents, each
7 page of paper should be output to a single page TIFF file. Distinct, logical document
8 breaks should be defined as such in a standard load file as described herein. In the
9 case of an organized compilation of separate Documents (*e.g.*, a binder containing
10 several separate Documents behind numbered tabs) the Document behind each tab
11 should be scanned separately, but any document or family relationship among the
12 scanned Documents in the compilation should be reflected in the data load file at the
13 appropriate standard fields. Pages containing post-it notes or other detachable notes
14 that obscure the underlying Document should be scanned once with the detachable
15 note intact, and then again without it, and made part of the same Document. The
16 Parties shall make reasonable efforts to unitize the Documents correctly.

17 C. Load File: The Parties will provide a standardized load file compatible
18 with Relativity and with a Bates number field included in the load file to match text
19 and metadata with TIFF/JPG images. With respect to hard copy documents, data on
20 the load file will include the following metadata or their equivalents (when
21 available), as defined in **Section VI** of this ESI Protocol:

- 22 a. BEGDOC;
- 23 b. ENDDOC;
- 24 c. BEGATTACH;
- 25 d. ENDATTACH;
- 26 e. CUSTODIAN;

- f. CONFIDENTIALITY;
- g. PGCOUNT;
- h. REDACTED; and
- i. TEXTLINK.

VI. PRODUCTION FORMATS FOR ESI

A. Production Format Generally.: Except for redacted and logged documents as described in **Section VII.H and VII.P** of this ESI Protocol, *infra*, the Parties will produce documents originating as ESI in TIFF format, with the exception of spreadsheets, presentation files, audio, and video files, which shall be produced in native format (but spreadsheets and presentation files may also be produced in TIFF format, together with their original native format, at the Producing Party's discretion). ESI shall be produced with extracted text, along with the below listed metadata fields, where reasonably available. If an original document contains color, it need not be produced in color in the first instance. However, the producing Party will meet and confer in good faith in response to requests for a color image if color is necessary to understand the meaning or content of the document. Color documents should be produced as single-page, 300 DPI JPG images with JPG compression and a high-quality setting so as not to degrade the original image. TIFFs/JPGs will show any and all text and images, including track changes where applicable, that would be visible to the reader using the native software that created the document. For example, TIFFs/JPGs of email messages should include the BCC line. If the image does not accurately reflect the document as it was kept in the usual course of business, including all comments, edits, tracking, etc., the Parties agree to meet and confer in good faith on production format options. The Parties will use all reasonable efforts to produce embedded files as attachments to the document that contained the embedded file, with the parent/child relationship preserved. The

1 embedded files will be marked with a “YES” in the load file under the
2 “EMBEDDED” metadata field. The Parties agree logos need not be extracted as
3 separate documents as long as they are displayed in the parent document.
4 Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be decompressed so that
5 the lowest level document or file is extracted. The Parties will provide a standardized
6 load file compatible with Relativity.

7 B. Metadata: Each of the Metadata and coding fields set forth below that
8 can reasonably and technically be extracted or generated from a Document shall be
9 produced for that Document. To the extent that metadata below does not exist or is
10 not reasonably accessible or available for any documents produced, nothing in this
11 Order shall require any Party to extract, capture, collect, or produce such data, with
12 the exception of the following fields, if available: (a) BegBates; (b) EndBates; (c)
13 BegAttach; (d) EndAttach; (e) All Custodian; (f) Redacted (Y/N); (g)
14 Confidentiality; and (h) HashValue. Metadata shall be provided in a Concordance-
15 format delimited file with a .DAT file extension and ASCII 020 and 254 delimiters
16 for column break and text qualifier. The first line shall be the header with field
17 names, and each subsequent line shall contain the fielded data for each Document.
18 The Parties also agree that every production of previously unproduced Documents,
19 the Metadata field values for each Metadata field header will be mapped to the same
20 Metadata field source, unless otherwise agreed in writing. For redacted items which
21 were originally ESI, all non-privileged metadata fields will be provided and will
22 include all non-privileged, non-redacted data. Redacted documents shall be
23 identified as such in the load file provided with the production. Nothing herein shall
24 require a Producing Party to create or produce Metadata that does not exist, cannot
25 be generated by ESI processing software, or is not reasonably or technically
26 accessible. When the Producing Party is unable to produce metadata for a particular
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field or ESI document, the Receiving Party may request an explanation of that inability. The Parties shall then meet and confer to attempt to resolve the problems. With respect to ESI, data on the load file will include the following metadata fields or their equivalents (when reasonably available):

Field Name	Description
BEGDOC	Begin Document Bates number
ENDDOC	End Document Bates number
BEGATTACH	Begin Bates number of family unit
ENDATTACH	End Bates number of family unit
CUSTODIAN	Individual from whom the document originated
ALL CUSTODIAN	Name of the agreed-upon custodians, in addition to the primary custodian, from whose files the item would have been produced if it had not been de-duplicated
FROM	Author of the email message
TO	Recipient(s) of the email message
CC	Recipient(s) of "Carbon Copies" of the e-mail message
BCC	Recipient(s) of "Blind Carbon Copies" of the email message
DOCUMENT SUBJECT	Subject field extracted from the metadata of the native file
EMAIL SUBJECT	Subject field extracted from the metadata of an email file
DOCUMENT TITLE	The title of a document
DOCUMENT AUTHOR	Author field extracted from the metadata of the native file
FILE EXTENSION	File extension of a document
CREATED DATE ³	Date file was created
CREATED TIME ⁴	Time file was created

³ Dates shall be in MM/DD/YYYY format.

⁴ Times shall be in 24 hour HH:MM:SS format.

1	LAST MODIFIED DATE	Date document was last modified
2	LAST MODIFIED TIME	Time document was last modified
3	EMAIL SENT DATE	Date email was sent
4	EMAIL SENT TIME	Time email was sent
5	EMAIL RECEIVED DATE	Date email was received
6	EMAIL RECEIVED TIME	Time email was received
7	DATE APPOINTMENT START	Start date of calendar appointment entry
8	TIME APPOINTMENT START	Start time of calendar appointment entry
9	DATE APPOINTMENT END	End date of calendar appointment entry
10	TIME APPOINTMENT END	End time of calendar appointment entry
11	TIMEZONE	Time Zone indicator where available
12	LASTAUTHOR	Name of the last person who saved the document.
13	PGCOUNT	Number of pages in a document (image records)
14	FILE SIZE	File size in bytes
15	LOGICALPATH	Original logical path location of the document in the repository from which it was collected.
16	FILE TYPE	File Type: email, image, spreadsheet, presentation, etc.
17	MD5 HASH	Unique identifier of the file
18	FILE NAME	Original name of the file or subject of email, including file extension
19	CONFIDENTIALITY	User-generated field that will indicate confidentiality pursuant to the Protective Order (i.e., CONFIDENTIAL). Otherwise, blank.

EMBEDDED	YES if applicable. Otherwise, blank.
REDACTED	YES if applicable. Otherwise, blank.
TECHNICAL ISSUE	YES where slip sheet reads “Technical issue—file cannot be processed.” Otherwise, blank.
TEXTLINK	Contains Path to .TXT files
NATIVELINK	Contains Path to native files

C. Reproduction in Native Format: The Parties further agree that to the extent any Party seeks production in native format of specifically identified ESI produced originally in TIFF form for good cause shown, the producing Party shall respond reasonably and in good faith to any such request.

VII. MISCELLANEOUS PROVISIONS

A. Additional Custodians or Data: The Parties have a continuing obligation under Federal Rule of Civil Procedure 26(e) to supplement or correct their respective disclosures or responses in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. The Parties reserve the right to request inclusion of additional custodians or non-custodial data sources whose relevance was discovered via documents or data produced, or testimony given, or for other good cause shown, within a reasonable time of such discovery, subject to the Local Rules and Individual Rules. If the Producing Party objects to the inclusion of such sources, the Parties will meet and confer to resolve the matter. If the Parties cannot reach resolution, the Court will determine the matter.

1 B. Additional Formatting Processes

2 Any producing Party may De-NIST their electronic collections before
3 searching and reviewing using the then-current NIST list published by the National
4 Institute of Standards and Technology. The Parties will meet and confer on the
5 necessity of additional formatting processes to enhance the production of ESI
6 including but not limited to: (a) additional ESI metadata and coding fields; and (b)
7 imaging specifications for Excel and PowerPoint files, to the extent not produced in
8 native format.

9 To the extent that relevant ESI cannot be rendered or reviewed without the
10 use of proprietary or special software, the Parties shall meet and confer to minimize
11 any expense or burden associated with the production of such documents or
12 information in an acceptable format, including issues as may arise with respect to
13 obtaining access to any such software.

14 The Parties will make reasonable efforts to ensure that all encrypted or
15 password-protected ESI are successfully processed prior to production. To the extent
16 encrypted or password-protected ESI are successfully processed, the Parties have no
17 duty to identify further the prior encrypted status of such documents. To the extent
18 security protection for such ESI cannot be successfully processed despite reasonable
19 efforts, the Parties shall not be required to produce them.

20 If a member of a document family that has otherwise been determined to be
21 responsive cannot be technically processed (*e.g.*, unsupported file format, file
22 corruption, inaccessible password-protected document) using reasonable efforts,
23 those technical problems shall be identified and disclosed to the receiving party by
24 production of a Bates numbered slip sheet that states “Technical issue—file cannot
25 be processed.” A receiving Party thereafter may raise with the producing Party any
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1 questions or concerns, and the Parties shall meet and confer to attempt to resolve any
2 issues.

3 C. Bates Numbering

4 The Parties shall assign a Bates number to individual pages of TIFF
5 documents and a Bates number to each document produced in native format. Bates
6 numbers shall be unique across the entire document production and sequential within
7 a given document. All volumes of production shall be identified by the same Bates
8 prefix and a numerical sequence.

9 D. Confidentiality Designations

10 If a document or other ESI has a confidentiality designation, the designation
11 shall be stamped on the face of all TIFF images pertaining to such document
12 pursuant to the Protective Order. If the receiving Party believes that a confidentiality
13 designation obscures the content of a document, then the receiving Party may request
14 that the document be produced with the confidentiality designation in a different
15 position. No Party may attach to any filing or any correspondence addressed to the
16 Court (including any Magistrate Judge), or any adverse or third party, or submit as
17 an exhibit at a deposition or any other judicial proceeding, a copy (whether electronic
18 or otherwise) of any native format document produced by any party without ensuring
19 that the corresponding Bates number and confidentiality legend, as designated by
20 the producing Party, appears on the Document or in the filename, if used in native
21 format. For each document that is marked confidential, a confidentiality field will
22 be populated with the word "Confidential" in the .DAT file.

23 E. De-Duplication

24 The Parties will perform de-duplication of ESI within and across custodians
25 according to MD5 or SHA-1 hash values at a family level and will produce only a
26 single copy of identical ESI, except where de-duplication would break up document
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1 families. De-duplication shall not break up document families. The custodian
2 associated with the first copy of a document processed will be considered the
3 primary custodian for that document (the custodian who will be used as the basis for
4 determining which other collected documents are duplicates). The producing Party
5 shall produce an “All Custodians” metadata field with each production as specified
6 in Part VI above which lists every custodian or source who or which possessed a
7 duplicate document. If the Parties de-duplicate ESI, they shall provide custodian
8 associations in a semi-colon delimited field that includes duplicate custodian name
9 information. If additional documents are produced after substantial completion of
10 document discovery, the producing Party shall produce an overlay that provides an
11 updated “All Custodian” field at the time new productions are made. At any time,
12 however, if a producing Party has not provided current “All Custodian” data and a
13 receiving Party believes in good faith that “All Custodian” data is necessary for a
14 scheduled deposition, filing deadline, or other case event, the receiving Party shall
15 inform the producing Party of such belief and request updated “All Custodian” data,
16 and the producing Party shall, upon such request, produce updated “All Custodian”
17 data sufficiently in advance of that event.

18 If there are any handwritten notes, or any other markings, on a document, it
19 shall not be considered a duplicate. Any document that contains an alteration,
20 marking on, or addition to the original document shall be treated as a distinct version,
21 and shall be produced as such. These alterations include, but are not limited to,
22 handwritten notes, electronic notes/tabs, edits, highlighting or redlining. If such
23 markings/alterations are made in color, the documents must, to the extent reasonably
24 practicable, be produced in color as originally intended.

25 F. Document Families: A document and all other documents in its
26 attachment range, emails with attachments, and email or other documents together
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1 with any documents referenced within those emails or other documents all constitute
2 family groups (each, a “Document Family”). The Parties agree that if any member
3 of a Document Family is responsive, the entire family must be produced, or else
4 logged as privileged, and no such member shall be withheld from production as a
5 duplicate. For purposes of production, and to the extent reasonably feasible on an
6 automated, scalable basis with existing technology, responsive documents should
7 include documents shared via by document stubs or via hyperlinks to internal
8 document sources accessible to the Responding Party (*e.g.*, Google Drive,
9 OneDrive, DropBox, Slack) (“Modern Attachments”), as part of the same document
10 family with the parent/ child relationship preserved. To the extent reasonably
11 feasible on an automated, scalable basis with existing technology, Modern
12 Attachments (i) shall be produced as separate, attached documents, and related back
13 to their respective parent documents, and (ii) the Producing Party shall produce the
14 contemporaneous document version of Modern Attachments, *i.e.*, the document
15 version likely present at the time an email or message was sent. The Parties will meet
16 & confer in good faith to negotiate a mutually-agreeable compromise with respect
17 to any specific documents identified by the Receiving Party as Modern Attachments
18 that appear not to have been produced. The Parties shall use all reasonable efforts
19 to preserve parent-child relationships (the association between an attachment and its
20 parent document). The Parties will provide a BEGATTACH and ENDATTACH for
21 each produced attachment in the load file. If any member of a document “family”
22 (*e.g.*, an email attachment) is withheld as Privileged, then the producing Party shall
23 produce a one-page slipsheet TIFF image stating, “Withheld on Privilege Grounds”,
24 and bearing a unique Bates number that is immediately after the Bates numbers
25 assigned to the other members of the family.

1 G. Embedded Documents: Where reasonably feasible on an automated,
2 scalable basis with existing technology, non-image embedded ESI documents (*e.g.*,
3 a spreadsheet embedded within a word processing document or an audio file in a
4 PowerPoint presentation) will be extracted, produced as independent document
5 records, and related back to the respective top level parent document (*e.g.*,
6 standalone file, email message, etc.) via the BEGDOC and ENDDOC fields
7 referenced in **Section VI**. Related embedded will be produced within a continuous
8 Bates range.

9 H. Encryption: The Parties will make reasonable efforts to ensure that all
10 encrypted or password-protected Documents are successfully processed for review
11 and production under the requirements of this Order, and if produced in Native
12 Format, the decrypted Document is produced. To the extent encrypted or password-
13 protected Documents are successfully processed according to the requirements of
14 this Order, the Parties have no duty to identify the prior encrypted status of such
15 Documents. If documents are not successfully processed despite use of reasonable
16 efforts, a placeholder TIFF image will be produced stating the file is password
17 protected. Upon request from either Party, the Parties shall meet and confer in good
18 faith regarding reasonable efforts or mechanisms to remove such security protection
19 or the production of available Metadata.

20 I. ESI Not Required: The Parties agree that the following ESI does not
21 require preservation, collection, review, or production because they are either not
22 reasonably accessible or because the remote possibility of additional relevant
23 information existing in not reasonably accessible sources is substantially outweighed
24 by the burden and cost of preservation, collection, review, and production, provided,
25 however, that nothing herein shall prevent a Party from subsequently requesting that
26 Documents from the sources identified below be preserved and produced if specific
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1 facts demonstrate a particular need for such Documents that justifies the burden of
2 preservation and retrieval:

3 a. Deleted, shadowed, damaged, residual, slack, fragmented, or
4 other data on hard drives, solid-state drives (SSDs), or similar physical media,
5 and which are only accessible by forensics;

6 b. Random access memory (RAM), temporary files, or other
7 ephemeral data that is difficult to preserve without disabling the operating
8 system;

9 c. On-line access data such as temporary Internet files, history,
10 cache, cookies, and the like;

11 d. Data stored on photocopiers, scanners, and fax machines;

12 e. Data in metadata fields that are frequently updated automatically,
13 such as last-opened dates;

14 f. Data maintained or duplicated in any electronic backup system
15 for the purpose of system recovery or information restoration, including, but
16 not limited to, system recovery backup tapes or other media, continuity of
17 operations systems, and data or system mirrors or shadows, if such data are
18 routinely purged, overwritten, or otherwise made not reasonably accessible in
19 accordance with an established routine system maintenance policy;

20 g. Server, system, or network logs;

21 h. Data remaining from systems no longer in use that is
22 unintelligible on the systems in use;

23 i. Video surveillance data; and

24 j. Email, calendars, and contact data sent to or from mobile devices
25 (*e.g.*, iPhone, iPad, Android, and Blackberry devices), provided that a copy of
26 all such electronic data is saved elsewhere (such as on a server, laptop, desktop
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1 computer, or “cloud” storage).

2 J. Original Documents: Nothing in this ESI Protocol shall eliminate or
3 alter any Party’s obligation to retain original and Native Format copies of
4 Documents, including associated metadata, of all ESI preserved for and produced in
5 the litigation and/or original versions of all Hard Copy Documents preserved for and
6 produced in the litigation. Nothing in this section alters a Party’s obligation to retain
7 data pursuant to the Federal Rule of Civil Procedure and/or Court Order. Each Party
8 reserves the right to request to inspect such original documents of the opposing Party
9 or Parties if reasonably necessary due to issues of legibility of all or any part of the
10 production copy, and such request shall not be unreasonably denied.

11 K. Lost, Destroyed or Irretrievable ESI: If a Producing Party learns that
12 responsive ESI that once existed was lost, destroyed, or is no longer retrievable as a
13 result of acts or circumstances not occurring in the ordinary course of business, the
14 Producing Party shall comply with its obligations under the Federal Rules of Civil
15 Procedure to explain where and when the responsive ESI was last retrievable in its
16 original format and to disclose the circumstances surrounding the change in status
17 of that responsive ESI, whether that information is available from other sources, and
18 whether any backup or copy of such original responsive ESI exists. Nothing in this
19 paragraph is intended to expand or limit the obligations under the Federal Rules of
20 Civil Procedure.

21 L. Objections Preserved: Nothing in this Protocol shall be interpreted to
22 require disclosure of information protected by the attorney-client privilege, attorney
23 work product doctrine, or any other applicable privileges or protection from
24 disclosure. Except as provided expressly herein, the Parties do not waive any
25 objections as to the production, discoverability, authenticity, admissibility, or
26 confidentiality of documents and ESI.

1 M. Clawback and Non-Waiver. Pursuant to Federal Rule of Evidence
 2 502(d), and consistent with the Protective Order in this matter, a Party's inadvertent
 3 disclosure shall not constitute a waiver, in this or any other action, with respect to
 4 any material protected by the attorney-client privilege, the work product privilege,
 5 or any other privilege or protection from disclosure recognized under applicable law.

6 N. Privileged Documents and Privilege Logs

- 7 1. Privilege Log. Consistent with the Federal Rules of Civil Procedure, a party
 8 withholding or redacting any responsive document on the grounds of
 9 privilege, immunity, or any similar claim shall provide to the receiving party
 10 a privilege log, except that:
- 11 a. the Parties shall have no obligation to log information generated on or
 12 after the date the original Complaint was filed in this Litigation; and
 - 13 b. activities undertaken in compliance with the duty to preserve
 14 information (including, but not limited to, litigation hold letters) are
 15 protected from disclosure under Fed. R. Civ. Proc. 26(b)(3)(A) and
 16 (B) and need not be included in the privilege log.
- 17 2. Privilege Log Contents. For each document withheld or redacted, the
 18 privilege log shall contain the following information: (i) the date of the
 19 document; (ii) the identity of all persons who authored, signed, or otherwise
 20 prepared the document; (iii) the identity of all persons designated as
 21 addressees or copyees; (iv) a brief description of the contents of the
 22 document that, without revealing information itself privileged or protected,
 23 is sufficient to understand the subject matter of the document and the basis
 24 of the claim of privileged or immunity; (v) the type or nature of the privilege
 25 asserted (e.g., attorney-client privilege, work product doctrine, etc.); and (vi)
 26 for redacted documents only, the bates numbers corresponding to the first
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1 and last page of any document redacted. For all individuals listed on a log
2 whose role as an attorney is the basis for a claim of privilege, the privilege
3 log shall contain some indication that the individual is an attorney (for
4 example, an asterisk next to each attorney's name).

5 Privilege Log Format. Privilege logs shall be produced as searchable,
6 editable, Microsoft Excel spreadsheets. The Parties agree to meet and confer
7 about methods and approaches to reduce a producing Party's burden in
8 furnishing a privilege log, where reasonably necessary.

9 3. Protocols for Logging E-mail Chains. Any e-mail chain (i.e., a series of e-
10 mails linked together by e-mail responses and forwarding) that is withheld or
11 redacted on the grounds of privilege, immunity, or any similar claim shall be
12 logged as one document and shall be identified by the top-most e-mail in the
13 chain that is withheld or redacted. To the extent an email chain containing
14 discoverable, non-privileged information also contains allegedly privileged
15 information, then the chain will be produced and only that portion of the
16 chain containing privileged information will be redacted, with the redaction
17 logged in accordance with the provisions of this Order. The parties shall not
18 be required to log identical copies of an e-mail that is included in a chain
19 that has been logged in accordance with this Paragraph.

20 4. Protocols for Logging "Families." Each member of a family (i.e., e-mail
21 attaching memorandum) that is withheld or redacted on the grounds of
22 privilege, immunity, or any similar claim shall be identified on the log
23 separately. If a family contains both privileged information and non-
24 privileged information that is discoverable under Fed. R. Civ. P. 26(b)(1),
25 only the privileged information shall be logged and withheld and/or redacted
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1 as privileged; any non-privileged, discoverable information in the family
2 shall be produced.

3 5. Requests for Additional Information. A Party receiving the log may make
4 reasonable requests for additional information with respect to specific entries
5 concerning the Privilege(s) claimed. If the party receiving the privilege log
6 requires further information to allow the receiving Party to assess the
7 claimed Privilege, it shall explain in writing the need for such information
8 and identify, by Bates number or other unique identifier, each document for
9 which it seeks this information. Within fourteen (14) days of such a request,
10 The Parties shall meet and confer to try to reach a mutually agreeable
11 solution. If they cannot agree within thirty (30) days of the first meet and
12 confer in connection with such request, the Parties must proceed in
13 accordance with the discovery dispute procedures reflected in the applicable
14 Local Rules and Individual Rules.

15 6. Redactions for Relevance Not Permitted. Except as set forth herein or
16 permitted by the Federal and Local Rules and interpretations of same such as
17 case law, , responsive documents shall not be withheld or redacted on any
18 basis other than the attorney-client privilege, attorney work product doctrine,
19 or other recognized protection or Privilege. For avoidance of doubt,
20 documents shall not be redacted, in any part, on the putative basis that the
21 redacted information is not relevant or is not responsive to any specific
22 request.

23 7. Redactions for Personally Sensitive Information. A Party may redact
24 personally sensitive or identifiable information such as: bank and brokerage
25 account numbers; social security numbers; personal addresses; personal
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1 telephone numbers; other personal identifying information; and the names of
2 minor children.

3 8. Metadata. For redacted items that were originally ESI, all metadata fields
4 noted in this Protocol that do not contain Privileged or protected information
5 will be provided and will include all non-redacted data.

6 9. Timing of Privilege Logs. Privilege Logs shall be produced as soon as
7 reasonably practicable after substantial completion of document production
8 and after completion of document production, and in no event later than
9 sixty (60) days after the completion of document production.

10 O. Processing Specifications: The Producing Party will generate and
11 preserve the MD5 or SHA-1 hash values of all ESI based on the Native Format file.
12 Where Documents are not otherwise produced natively, all TIFF images shall
13 display deletions, revisions, comments, speaker notes, and other rich data (including,
14 but not limited to, hidden text, strikethrough text, the identity of the person making
15 the deletion or revision and the date and time thereof, *etc.*) as displayed in the
16 Document, regardless of the display setting for this information as last saved by the
17 custodian, to the extent reasonably and technically possible. Producing Parties shall
18 make reasonable efforts to process all ESI with a single time zone and a date and
19 time setting that is consistent across all of the Parties' productions. The Parties agree
20 to meet and confer in good faith regarding any issues arising from this aspect of
21 production.

22 P. Production Media: The Producing Party shall produce Document
23 images, Native Format files, load files, and Metadata via secure file transfer protocol
24 ("FTP"), or other mutually agreeable media ("Production Media"). Each piece of
25 Production Media shall include a unique identifying label corresponding to the
26 identity of the Producing Party (*e.g.*, "LN"), the sequential production number (*e.g.*,
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1 “PROD004”), and the Document Number ranges of the Documents in that
2 production (*e.g.*, “LN0000000123 - LN0000000456”). To the extent that the
3 Production Media includes any confidential information protected under Protective
4 Order, the label on such Production Media shall indicate that the Production Media
5 includes information so designated as required under the terms of the Protective
6 Order. Production Media shall include text referencing the case name and number.
7 Further, any replacement Production Media shall cross-reference the original
8 Production Media, clearly identify that it is a replacement, and cross-reference the
9 BEGDOC and ENDDOC range that is being replaced. All Production Media that is
10 capable of write protection should be write-protected before production. All
11 Production Media may be encrypted, with the Producing Party to provide a
12 decryption key under separate cover at the time of production.

13 Q. Redaction: Except as set forth herein, responsive documents shall not
14 be redacted on any basis other than the attorney-client privilege, attorney work
15 product doctrine, or other recognized protection or privilege. In addition, a Party
16 may redact the following personally sensitive or identifiable information: bank and
17 brokerage account numbers; social security numbers; personal addresses; personal
18 telephone numbers; other personal identifying information; and the names of minor
19 children. The Parties will produce redacted documents in TIFF format with
20 corresponding searchable OCR text and associated metadata for the documents,
21 ensuring the redacted content is fully protected from disclosure. To the extent
22 spreadsheets contain redacted text, the Parties shall provide a copy of the native file
23 with redactions. For redacted items that were originally ESI, all metadata fields
24 noted in this ESI Protocol that do not contain Privileged or protected information
25 will be provided and will include all non-redacted data. If, during discovery, the
26 Parties identify other kinds of information that and Party has a reasonable basis for
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1 redacting, the Parties will meet and confer regarding it before such redactions are
2 made.

3 R. Third Party Documents and ESI

4 A Party that issues a subpoena upon any third-party (“Issuing Party”) shall
5 include a copy of this Protocol and the Protective Order with the subpoena. The
6 Issuing Party shall produce a copy to all other Parties of any ESI (including any
7 metadata) obtained under subpoena to a third party. If a third-party production is not
8 Bates-stamped, the Issuing Party will endorse the non-Party production with unique
9 Bates prefixes and numbering scheme prior to reproducing them to all other Parties.

10 **VIII. MODIFICATION**

11 This protocol may be modified by written agreement of the Parties or by the
12 Court for good cause shown.

13
14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: July 16, 2024

THE ROSEN LAW FIRM, P.A.

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: July 16, 2024

/ s / Sagar
Honorable Alka Sagar
United States Magistrate Judge